IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2751 OF 2007
IN
SUIT NO. 2022 OF 2007

Taher Taiyebali Koita. ... Plaintiff.

V/s.

Yusufali Taiyebali & Ors. ... Defendants.

Mr. Kunal Damle with Mr. Swanand R. Ganoo i/b. Ms. Suman Jain for the Plaintiff.
Ms. K.C. Nichani for Defendant 1.

CORAM : DR. D.Y. CHANDRACHUD,J.

14TH DECEMBER 2007.

P.C. :-

. The Plaintiff has sought relief at the interlocutory stage for an order restraining the Defendants from creating any third party rights in respect of the property forming the subject matter of the suit and/or for the appointment of a Receiver.

2. The Plaintiff seeks a declaration in the suit that he is entitled to a share in the property and that

certain arrangements which were recorded in the minutes of the family meeting held on 29th February 1984 do not bound the Plaintiff. The Plaintiff also seeks a disclosure of the accounts since 22nd October 2000.

3. The suit has been instituted nearly 23 years after the family settlement dated 29th February 1984. The settlement, it is an admitted position before me has been scribed in the hand writing of the Plaintiff himself. Under the settlement, the property which forms the subject matter of the suit viz. 186 Ripon Road, Mumbai went to the parties of the first part Yusufali and Safiabai. All the remaining properties went to the party of the second part. The Plaintiff has raised a dispute on the ground that he was not a party to the family settlement and that he has only a witness. In the affidavit-in-reply it has been averred in paragraph 13 that the Plaintiff has, in fact, taken the benefit of the settlement. In paragraph 3 of the rejoinder, the Plaintiff has admitted that in respect of two properties viz. the property at Saki Naka and another property which is described as 3/5 Madanpura, the Plaintiff has obtained benefit thereunder. The grant of an order of injunction is an equitable remedy.

The Plaintiff has approached the Court over 23 years after the deed of family settlement was executed on 29th February 1984. The settlement would prima-facie show that the Plaintiff himself was a party thereto viz. being the party of the second part. The settlement was within the knowledge of the Plaintiff who has scribed the settlement.

4. In these circumstances, the delay in seeking relief in respect of the family settlement which prima-facie has been acted upon will disentitle the Plaintiff to the grant of interlocutory relief.

5. The Motion is accordingly dismissed.